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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: SEP 30 2003

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

PUBLIC COPY

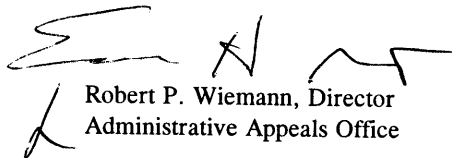
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion to reopen. The motion to reopen will be granted; the denial of the visa petition will be affirmed.

The petitioner is a Sikh temple, seeking classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as a Sikh priest and a spiritual hymn singer.

The petitioner filed a Form I-360 petition for special immigrant classification on May 26, 2000. The petition was denied by the director in a decision dated October 31, 2000. The petition was denied on the grounds that the petitioner failed to establish that it is a qualifying organization.

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding. 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

Counsel for the petitioner filed an appeal from the decision and requested an extension of time in which to submit evidence that it had the appropriate tax-exempt status. The AAO dismissed the appeal on August 1, 2001, finding that the petitioner had failed to submit the requested evidence. The decision further noted that the petitioner failed to establish that it had tendered a qualifying job offer; that it has the ability to pay the proffered wage; that the beneficiary had been continuously and solely carrying on the vocation of a priest for the two years preceding the filing of the petition; and that the beneficiary was qualified for the proffered position.

Counsel for the petitioner now files a motion to reopen that decision, and submits additional evidence.

On motion, the petitioner submitted a letter from the Internal Revenue Service (IRS) dated November 24, 2000, showing that it was granted tax-exempt status under section 501(c)(3) in May 1993. The letter indicates, however, that the basis for this status is that the petitioner is an organization described in section 170(b)(1)(A)(vi) of the Internal Revenue Code (IRC). This section refers to organizations receiving a substantial part of its support

in the form of contributions from publicly supported organizations, from a governmental unit, or from the general public. This section is not the one relating to religious organizations. Cf. section 170(b)(1)(A)(i) IRC.

There are several classes of nonprofit organizations eligible for tax exemption under section 501(c)(3) of the Internal Revenue Code. Only organizations classified, or classifiable, as "churches" pursuant to sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC are considered qualifying religious organizations for the purpose of special immigrant religious worker classification. For example, charitable organizations or schools classified under sections 170(b)(1)(A)(vi) or 170(b)(1)(A)(ii) are not qualifying as religious organizations, even if they are organized and operate under the principles of a particular religious faith. Such organizations are not "churches" and do not employ religious workers as contemplated by the statute.

In review, the petitioner has failed to overcome the director's objection to approving the petition.

The next issue to be addressed in this proceeding is whether the petitioner demonstrated its ability to pay the proffered wage. It is noted that the petitioner stated that it had filed three immigrant visa petitions including the instant petition.

8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

Here, the petitioner has furnished its federal tax returns for 1997, 1999 and 2000, indicating that the petitioner has had a surplus of net current assets. The petitioner has established the ability to pay the proffered wage.

Another issue to be addressed in this proceeding is whether the petitioner established that it had tendered a qualifying job offer.

8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the

solicitation of funds for support.

On motion, the petitioner stated that it had been paying and would continue to pay the beneficiary a monthly salary of \$500 plus provide free room and board. The petitioner has established that it has tendered a qualifying job offer.

The next issue to be addressed in this proceeding is whether the petitioner established that the beneficiary had been continuously and solely carrying on the vocation of a priest for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on May 26, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously carrying on the vocation or occupation of a Sikh priest since at least May 26, 1998.

On motion, the petitioner submitted a letter from its president stating that the beneficiary was employed and compensated at as a Sikh priest and hymn player at a Sikh temple (gurdwara) in India from April 13, 1994 until November 2, 1999. The petitioner submitted a letter from that Sikh temple stating the same. The petitioner also stated that the beneficiary had been serving at the petitioning organization as a full-time Sikh priest and hymn player since November 1999, receiving \$500 a month in salary and free room and board. The petitioner also stated that the beneficiary was paid in part with cash and in part by check. The petitioner submitted copies of checks made payable to the beneficiary in the amount of \$400.

The evidence furnished on motion is not persuasive. The petitioner bears the burden of proof in these proceedings. The earliest date on the checks is March 26, 2000. There is no evidence that the checks were canceled and cashed. One check in the amount of \$400 is annotated "pay for Feb. - May 00." Yet the petitioner claims to have been paying the beneficiary \$500 *per month* (\$400 by check). The petitioner has asserted that it has employed the beneficiary since November 1999, but has failed to submit corroborating evidence in the form of W-2's and income tax returns.

The claim that the beneficiary was employed through some informal system of remuneration is acknowledged, but does not relieve the petitioner of its burden to demonstrate that the beneficiary was, in fact, continuously employed during the two-year period. Merely going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The final issue to be addressed is whether the petitioner established that the beneficiary is qualified for the proffered position.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

* * *

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation.

On motion, the petitioner submitted a letter of the petitioning organization's president stating that the beneficiary received his religious training and served as a Sikh priest at the Damdami Taksal in Amritsar, India from 1990 to 1992. The president further stated that the beneficiary received vocal training at the Pracheen Kala Kendra in Jalandhar, India in the years 1995 to 1996. The record of proceeding contains the beneficiary's certificate from the Pracheen Kala Kendra located in Chandigarh, India. The record also contains the beneficiary's diploma from secondary school. The record does not contain corroborating evidence that the beneficiary completed a course of religious training.

Furthermore, the statements of an official of the individual petitioning organization are considered, but are insufficient to establish that the beneficiary is a qualified Sikh priest. To establish that an alien is qualified in a religious position and has been carrying on such a position, acceptable evidence includes a letter from a Superior or Principal of the denomination. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). Here, the petitioner has failed to submit any verification from an authorized official of its denomination that the beneficiary is a recognized Sikh priest.

ORDER: The appeal is dismissed; the denial of the visa petition is affirmed.